

EXHIBIT 6

EXCERPTS FROM THE APRIL 1, 2024
DEPOSITION OF STEVEN MILTENBERGER

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Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TNT AMUSEMENTS, INC.,)
d/b/a PLAY-MORE COIN-OP,)

Plaintiff,)

vs.) No. 4:23-cv-00330-JAR

TORCH ELECTRONICS, LLC,)
STEVEN MILTENBERGER, and)
SONDRA MILTENBERGER,)

Defendants.)

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VIDEO-RECORDED DEPOSITION OF STEVEN MILTENBERGER
TAKEN ON BEHALF OF THE PLAINTIFFS
APRIL 1, 2024

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Page 22

1 your attention down here to an exhibit sticker on
2 this document. This is the same document that was
3 shown to you as Exhibit 4 during your personal
4 deposition on December the 15th, 2023. Or excuse
5 me, I can't recall, was that the personal
6 deposition or not? We'll say in a prior deposition
7 on December 15, 2023.

8 First, do you recognize this
9 document?

10 A Yes, I believe so.

11 Q And what is this document?

12 A I believe that is -- I believe that
13 is what is on the web page.

14 Q Do you know the point in time at
15 which this text appeared on the web page?

16 A I believe we put it on the web page
17 in 2022, but I can't remember for sure.

18 Q Okay. Now, when I asked you about
19 this previously, and I'm not faulting you for it,
20 but you expressed a failure of recollection about
21 when the website was changed to show this text
22 versus the text that I'm going to show you now from
23 Exhibit 7, which is coming up, which is text that
24 appeared on -- well, first of all, I'll show you
25 again here, let me see if I can change the view

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Page 26

1 asking you to disclose a communication with an
2 attorney, and if you feel that answering would
3 require you to do so, you may simply say that "I
4 can not answer without divulging a privileged
5 communication." Does that make sense?

6 A It does, thank you. From what I can
7 remember in going through my emails, that appeared
8 to be the only reason that I can remember.

9 Q I'd like to turn your attention back
10 to Exhibit 7. As you just told us, this
11 information was removed from the website. Do you
12 recall when these talking points were removed from
13 the website?

14 A I don't -- I don't remember exactly.
15 I would think in 2022 sometime, but I'm -- I can't
16 remember. I'd have to look at my emails again.

17 Q So I have a good reason to believe
18 that this change took place in September of 2022.
19 Do you have any reason to disagree with that?

20 A I don't have any reason to disagree
21 with that. I just don't -- don't remember that. I
22 would just need to look at the emails and see.

23 Q At -- in September of 2022, was Torch
24 engaged in litigation relating to the legality of
25 these devices?

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Page 32

1 with different games, but I can't remember all the
2 games, at times, yeah.

3 Q Is it fair to say that on at least
4 one of those occasions, the word that you asked to
5 be removed from the screen was the word "random"?

6 A I believe that's correct, yes.

7 Q Okay. Are there other examples of
8 changes that were requested by Torch to any of the
9 Torch devices by Banilla?

10 A I believe we have asked them to
11 change the -- there's been a request to change play
12 amounts, I believe, where we were eliminating the
13 ten and twenty dollar play amount. I believe there
14 was also a request to eliminate the low, medium,
15 high settings to where it was just a single --
16 where there wasn't an option for the settings.

17 And I can't -- I can't remember any
18 other changes, but that's what I can remember.

19 Q Do you recall a time where Torch
20 requested there be changes made to the Deluxe
21 devices relating to a shuffling process in those
22 devices?

23 MR. CRAIG: Object to form.

24 A There -- there wasn't a -- I don't
25 look at that as a -- as a change. That was

CONFIDENTIAL

Page 35

1 question without divulging communication with my
2 attorney."

3 A Right.

4 Q But I don't want you to
5 inadvertently, Mr. Miltenberger, waive any
6 privilege you might enjoy over those
7 communications, so that's why we're being so
8 particular about this. So I apologize for -- for
9 the difficulty.

10 But let's then ask this question. So
11 there were then conversations with Banilla that
12 revealed to you whether or not there were shuffling
13 processes in any of the Torch devices. Did you
14 learn through any of those conversations that there
15 were shuffling processes in any of the Torch
16 devices?

17 MR. CRAIG: Object to form. It might
18 misstate kind of the testimony, but you can answer
19 to the extent you can answer.

20 A Yeah, I -- I don't know if there were
21 any -- or if there was any shuffling in any of the
22 Torch devices.

23 Q (BY MR. FINNERAN) My question isn't
24 whether you know. It's whether Banilla -- whether
25 those conversations with Banilla included a

1 discussion of the fact that there was a shuffling
2 process in any of the Torch devices.

3 So what is the answer to that
4 question?

5 MR. CRAIG: Object to form. You're
6 talking about specific Torch -- just the Torch
7 devices that Banilla had sent; right? Not -- not
8 whether in Banilla devices there might be a shuffle
9 feature available. Is that right, Rich?

10 MR. FINNERAN: Yes, Aaron, to clarify
11 my question, by the term "Torch devices," I don't
12 mean other devices sold by Banilla. I mean devices
13 that Torch has purchased from Banilla.

14 Q (BY MR. FINNERAN) And my question
15 is, were you informed by Banilla at any point that
16 any of the devices that had been purchased by Torch
17 from Banilla involved a shuffling procedure?

18 A I -- I don't remember if any Torch
19 devices had a shuffling -- had a shuffle.

20 Q Were you informed by Banilla that any
21 devices did have a shuffle?

22 MR. CRAIG: Any -- any Torch devices
23 that have a shuffle?

24 MR. FINNERAN: Excuse me, yes, sir --

25 A Yeah, I don't --

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Page 37

1 MR. FINNERAN: -- any Torch devices.

2 A I don't remember if we had any Torch
3 devices that had a shuffle.

4 Q (BY MR. FINNERAN) And you've
5 answered my question again based on your knowledge,
6 but I'm asking about whether Banilla ever informed
7 you that a Torch did have a shuffle -- excuse me a
8 Torch device did have a shuffling feature?

9 A Not that I can remember, but I don't
10 remember that.

11 Q Okay. I'm going to show you what I'm
12 marking as Exhibit 9, which I will also then
13 transmit to the exhibit chain. Okay. Well, here
14 comes Exhibit 9, and now I'm going to show you what
15 I've marked as Exhibit 9. Please tell me when you
16 can see it on your screen. Oh, I haven't shared it
17 that's why you can't see it. All right. Sorry, I
18 forgot that we had switched off of the Share. Here
19 we go.

20 I'm showing you now what's been
21 marked as Exhibit Number 9. Do you see this
22 document?

23 A I do, yes.

24 Q All right. And just to orient
25 ourselves, this was a email from Dan Lewicki to you

CONFIDENTIAL

Page 39

1 Q And do you know what is referred to
2 here as "the D3 problem"?

3 A Not right here, no.

4 Q Do you see where it says "the D3
5 problem"?

6 A Yep, I see it says "D3 problem."

7 Q Do you know -- you not know what that
8 referred to?

9 A I would need to look at the rest of
10 the emails or the email chain to understand it. I
11 don't know.

12 Q Well, that's what we're going to do
13 next. So go up one email. You see the email at
14 11:39 from Jason Smith?

15 A Yes.

16 Q Okay. It says, (quote as read):

17 If you're referring to the old
18 pools shuffle update then the
19 following is true. If you run
20 the new -- excuse me. If you run
21 the update I sent you on an
22 updated or not updated device, it
23 will be correct when you're done.
24 You don't have to run the old
25 update. The new update reverts

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Page 41

1 And then you can see up here there's
2 simply a response from Mr. Lewicki saying, (quote
3 as read).

4 Never mind, it looks like you
5 already replied.

6 So I still need to understand from
7 your answers what is referred to here by "the
8 shuffle." So what is, in either -- in your email,
9 what are you referring to by "the shuffle"?

10 A Well, from what I understand, yeah,
11 we had come to learn that there might be a issue
12 with a -- with a possible shuffle. And so it looks
13 like this is the -- this is a response back to make
14 sure that our games do not have a shuffle.

15 Q And was that an issue exclusive to
16 the D3, meaning the Deluxe 3, or was that a problem
17 for more than just the Deluxe 3?

18 A I -- I don't -- I don't remember
19 that. Um, I -- from what I do remember, is that
20 we, you know, that we ran updates on everything to
21 make sure, but I -- I don't remember if that was --
22 I don't believe that was everything, but I don't
23 remember.

24 Q Okay. So here it talks about a D3
25 problem and it talks about addressing an issue or

CONFIDENTIAL

Page 42

1 problem outside of the shuffle, and so my question
2 is, was there any time at which the Deluxe 3
3 devices marketed by Torch in the State of Missouri
4 contained a shuffling process?

5 MR. CRAIG: Object to form.

6 A Yeah, I don't -- I don't know that.
7 I don't remember that. I don't remember if we had
8 a confirmation that there were any D3s operating
9 with a shuffle. I do know that we had learned
10 about this and then -- and then resolved it.
11 That's all I remember.

12 Q (BY MR. FINNERAN) There is a
13 reference here to a "pools shuffle update" in the
14 email from Mr. Smith. Do you see where I've
15 highlighted that?

16 A Yes, I see it.

17 (Simultaneous speaking - inaudible.)

18 A Yep, I see it. Yep, I'm sorry, I see
19 it.

20 Q I thought maybe you could see my
21 highlights, but --

22 A Oh, I can now. Yeah, they're coming
23 through now.

24 Q Okay. So there's reference to a
25 "pools shuffle update." Do you know what he was

CONFIDENTIAL

Page 43

1 referring to by the "pools shuffle update"?

2 A I -- I don't know exactly. I would
3 -- I'm not -- I'm not sure other than, you know, we
4 had discovered that, um, there was a pools -- this
5 -- this shuffle. We had learned that and were
6 doing, you know, what we could to make sure that
7 our games didn't -- didn't have that.

8 Q And so was it -- is it correct to
9 say, then, that whatever the pool shuffle update
10 was, was a software update that was necessary to
11 remove an existing shuffling procedure from a
12 device? From a Torch device?

13 MR. CRAIG: Object to form, assumes
14 facts not in evidence, misstates prior testimony.
15 You can respond.

16 A I don't know that it was existing.

17 Q (BY MR. FINNERAN) So why would there
18 be a necessity of having an update if there was no
19 shuffling procedure in the first place?

20 A For insurance, to make sure that
21 there -- that there wasn't.

22 Q Okay. All right. We can move on
23 from this email. So what -- so we just talked
24 about a shuffle update. Or, excuse me, the pools
25 shuffle update. Were there any other updates of

CONFIDENTIAL

Page 44

1 that sort that Torch requested from Banilla?

2 A I don't remember.

3 Q How frequently would Torch update its
4 software based upon information or other things
5 received from Banilla?

6 A Not -- not very often.

7 Q Is this the only example you can
8 think of, or are there any other examples?

9 MR. CRAIG: And you're talk -- are
10 you talking outside of the code changes to change
11 language that we already discussed, Rich?

12 Q (BY MR. FINNERAN) Yes. So I'm only
13 asking about changes that we have not already
14 discussed in the course of this deposition. Are
15 there any other updates or changes from Banilla
16 that you recall beyond the ones we've discussed?

17 A Not that I can remember.

18 Q Okay. All right. So now I'm going
19 to turn your attention to the topic that is
20 designated as topic 18 within the parties' agreed
21 submission, and that is the topic of (quote as
22 read):

23 The nature, function, operation
24 of any Torch device, including as
25 it relates to:

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Page 45

1 And then there is a long list of
2 topics relating to the function of the Torch
3 devices. So my first question is, do you feel
4 prepared today to discuss topic number 18?

5 A I do, yes.

6 Q All right. So I'm going to basically
7 walk through each of these topics and just ask you
8 for what you know based upon your preparation for
9 today's deposition.

10 The first was (quote as read):

11 Examples of game themes on Torch
12 devices.

13 But I believe that the Excel sheet
14 you provided me already included a number of
15 examples so I'm happy to move past that one unless
16 there are other examples that you can think of that
17 weren't on that sheet that you'd like to mention.

18 A Nope, those are the only examples I
19 can think of.

20 Q Okay. So does each Torch device
21 contain a sequential list of pay out amounts for
22 each respective game theme?

23 MR. CRAIG: Object to form to the
24 extent it calls for expert testimony. You can
25 respond.

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Page 52

1 MR. CRAIG: Object to form.

2 A From what I understand, they are in
3 the same order.

4 Q (BY MR. FINNERAN) Are you aware of
5 the fact that Banilla uses a shuffling process,
6 when the devices leave its facilities, to randomize
7 the order in each individual device before it
8 reaches Torch?

9 MR. CRAIG: Object to form, I believe
10 misstates testimony by Banilla. But you can
11 respond to the extent that you can.

12 A I don't know that. I don't know.

13 Q (BY MR. FINNERAN) You don't know
14 whether that's true one way or the other, or you
15 know that it's not true?

16 MR. CRAIG: Same objection.

17 A I don't know one way or the other.

18 Q (BY MR. FINNERAN) Okay. You
19 actually answered the next topic in one of your
20 answers already so we'll move ahead to topic 12 --
21 or excuse me, topic 11.

22 A Okay.

23 Q Are -- are -- do the Torch devices
24 permit players, we'll start there, to modify,
25 influence, or otherwise control the outcome of any

CONFIDENTIAL

Page 57

1 predicting what the payout amount on the next play
2 of a Torch device would be?

3 MR. CRAIG: Object to form.

4 A If the -- say it again?

5 Q (BY MR. FINNERAN) Does a player have
6 any way of -- excuse me. If a player who does not
7 use the Prize Viewer mechanism, does that player
8 have any other way of predicting what the outcome
9 of the next game will be?

10 MR. CRAIG: Object to form.

11 A They do.

12 Q (BY MR. FINNERAN) What -- how would
13 they predict that without touching the Prize
14 Viewer?

15 A If they, um, if they played through
16 the entire game, they would know all of the
17 outcomes, and they would be able to then know what
18 that next outcome was. Or is.

19 Q Are you aware that some of these game
20 themes and payout amounts have a sequential list
21 that is at least 100,000 in number?

22 A I don't remember.

23 Q Are you aware that some have a list
24 that is at least 60,000 in number?

25 A Yes.

CONFIDENTIAL

Page 60

1 Q (BY MR. FINNERAN) Okay. So I've
2 asked you up till now about yourself. You are one
3 of the employees of Torch. Your wife is also an
4 employee of Torch. Is that correct?

5 A That's correct.

6 Q Does Torch have any other employees
7 today?

8 A No.

9 Q And am I correct, then, Torch has not
10 previously had any other -- any other employees?

11 A That's correct.

12 Q Are you aware, then, of your wife,
13 the only other employee of Torch, other than last
14 Thursday, ever observing someone playing a Torch
15 device without using the Prize Viewer mechanism?

16 MR. CRAIG: Object to form,
17 potentially misstates testimony. I'm not sure
18 Sondra's there, or if that's been established, but
19 with that clarification, you can respond.

20 A Sondra -- Sondra was not there, but I
21 don't know -- I'm -- I'm not sure. I don't know is
22 the answer to your question.

23 Q (BY MR. FINNERAN) Okay. All right.
24 So now let's talk about a player who does use the
25 Prize Viewer mechanism and sees, by using that

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Page 65

1 A That is not how I understand it.

2 Q (BY MR. FINNERAN) Okay. Does Torch
3 have the ability to review -- oh, actually, let me
4 ask you one question. I think you said a moment
5 ago you don't use the restore terminal function; is
6 that correct?

7 A That's correct.

8 Q To your knowledge, has Torch ever
9 used the restore terminal function?

10 MR. CRAIG: Object to form.

11 A I don't remember if we ever have.
12 You know, I can't say that we never have. I'm
13 saying that we -- we don't right now and haven't
14 been for -- for a while.

15 Q (BY MR. FINNERAN) Okay. Do you know
16 if there was any previous point in time at which
17 the restore terminal function was used?

18 MR. CRAIG: Object to form. I mean
19 just with the limitation that we use independent
20 contractors that he's not -- he was under no
21 obligation to talk to every independent contractor
22 to see if that was something they accidentally did.

23 If you want to talk to him about
24 procedures and general policies, I think that's
25 okay. But I just want to be careful when we're

CONFIDENTIAL

Page 118

CERTIFICATE OF REPORTER

I, TARA SCHWAKE, a Registered Professional Reporter and Notary Public within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

A handwritten signature in black ink, appearing to read "Tara Schwake", with a long horizontal flourish extending to the right.

Notary Public in and for
The State of Missouri